

REMARKS

Favorable reconsideration of this application, in view of the present amendments and in light of the following discussion, is respectfully requested.

Claims 23-37 are pending. Claims 23-24, 27 and 36-37 are amended to further clarify the features contained therein. No new matter is introduced.

In the outstanding Office Action, Claims 23-26, 36 and 37 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Downs (U.S. Patent No. 6,226,618, hereafter “Downs”) in view of Floyd (U.S. Patent No. 6,243,692, hereafter “Floyd”); and Claims 27-35 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Downs and Floyd in further view of Davis (U.S. Patent No. 6,105,008, hereafter “Davis”).

In reply to the rejection of Claims 23-26, 36 and 37 as being unpatentable over Downs in view of Floyd, Claim 23 is amended to recite, , *inter alia*, a payment system for controlling continued use of a software program by a user that includes:

a terminal configured to access software stored on a computer readable storage linked thereto, and *including control means for analyzing conditions based on previous use of the software to determine whether a further payment relating to the software is required for continued use*, and configured to generate and transmit a first message, which is an offer message, containing at least an identity of the software owner, offer parameters and a digital signature of the software owner for at least part of the offer parameters...(Emphasis added).

Turning to the primary reference, Downs describes an electronic content delivery system wherein a digital content store provides encrypted versions of digital content to a user.¹ The content may be decrypted using a key provided to the user upon payment of a fee.² However, as acknowledged by the outstanding Office Action, Downs fails to disclose determining whether a further payment relating to the software is required for continued use.³

¹ Downs at column 3, lines 40-55.

² See, for example, Figure 9 of Downs.

³ See the outstanding Office Action at page 3.

To remedy this deficiency in Downs, the outstanding Office Action combines Downs with Floyd.

Floyd describes secure electronic software packaging using a set up-external unlocking module. More specifically, Floyd describes injecting a trial module into a software application to create a trial version of the application.⁴ The trial version includes a trail DLL, which checks for the presence of an unlocking DLL.⁵ If no unlocking DLL is present, the trail DLL controls execution of the application according to a primary license file which, for example, specifies a thirty-day trial.⁶ After expiration of the 30-day trial, the trial DLL will not allow execution of the software.⁷

However, Floyd does not describe that the trial DLL determines whether a further payment, is necessary for continued use of the software. Instead, Floyd only describes that the trial DLL checks for the unlocking DLL in order to unlock the software.⁸ Once the unlocking DLL is present, however, Floyd does not describe that the trial DLL checks to see whether additional conditions must be met in order to maintain the software unlocked, much less that the trial DLL checks to see whether a further payment is necessary to keep the program unlocked. Conversely, amended Claim 23 recites control means for analyzing conditions based on previous use of the software to determine whether a *further* payment relating to the software is required for continued use. As such, Floyd fails to disclose the claimed control means as recited in amended Claim 23. Therefore, no combination of Downs and Floyd describes every feature recited in amended Claim 23 and amended Claim 23, together with any claim depending therefrom, is believed to be in condition for allowance.

Moreover, amended Claims 36 and 37 recite features substantially similar to those recited in amended Claim 23 and are believed to be in condition for allowance for

⁴ Floyd at column 3, lines 15-31.

⁵ Floyd at column 3, lines 52-67.

⁶ Floyd at column 4, lines 8-11.

⁷ Floyd at column 4, lines 15-18.

⁸ Floyd at column 3, lines 52-67.

substantially similar reasons. Accordingly, it is respectfully requested that the rejection of Claims 23-26, 36 and 37 under 35 U.S.C. § 103(a) be withdrawn.

As all other rejections of record rely upon Floyd for describing the above-distinguished features, and the above-distinguished features are not disclosed or suggested by Floyd, alone or in combination with any other art of record, it is respectfully submitted that a *prima facie* case of obviousness has not been presented. Accordingly, it is respectfully requested that the rejection of Claims 27-35 under 35 U.S.C. § 103(a) be withdrawn.

For the reasons discussed above, no further issues are believed to be outstanding in the present application, and the present application is believed to be in condition for formal allowance. Therefore, a Notice of Allowance for Claims 23-37 is earnestly solicited.

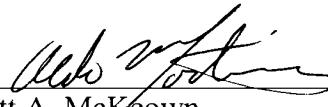
Respectfully submitted,

OBLON, SPIVAK, McCLELLAND,
MAIER & NEUSTADT, L.L.P.

Customer Number

22850

Tel: (703) 413-3000
Fax: (703) 413 -2220
(OSMMN 08/09)



Scott A. McKeown
Attorney of Record
Registration No. 42,866

Aldo Martinez
Registration No. 61,357